IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6149 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHUBHAI JERAMBHAI VIRVAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6149 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the order of detention dated 16-4-2003 passed

by the District Magistrate, Navsari, Dist. Navsari under the powers conferred upon him under Sec.3(2) of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act (hereinafter referred to as "the Act").

2. Heard learned counsel for the respective parties. Learned AGP, Mr.R.C.Kodekar, tenders affidavit affirmed on behalf of the respondent No.1-State while learned Additional Central Government Standing Counsel for respondent No.4, Ms.Davawala, tenders affidavit affirmed on behalf of Union of India. The same are ordered to be taken on record.

3. The learned counsel for the petitioner has submitted that against the detention order, the detenu has made a representation on 21-4-2003 which was received by the detaining authority on 25-4-2003 whereas the order of detention has been confirmed by the State Government on 25-4-2003. It is further submitted that the representation of the petitioner though received by detaining authority on 25-4-2003 was rejected on 27-4-2003 which is after the impugned order confirmed by the State Government. Hence, according to him, the District Magistrate has no authority to pass such order after confirmation of the detention order as he has become functus offitio after confirmation of the detention order by the State Government and, therefore, it is prayed that on this ground alone, the impugned order is required to be quashed and set aside. In this connection, he has relied upon the decision of this Court rendered in the case of SALIM POTHIYU REHMANBHAI BELIA VS. DISTRICT MAGISTRATE, DISTRICT MEHSANA AND ORS. reported in 1994 (2) GLR (UJ) 11, wherein this Court, relying upon the decision of Hon'ble Supreme Court rendered in the Case of Navalshankar Ishwarlal Dave V. State of Gujarat, reported in AIR 1994 SC 1496, has held as under ;-

> "that the detaining authority is left with no power to consider and reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the

District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

4. Here in the present case, since the District Magistrate has rejected the representation of the petitioner after the impugned order was confirmed by the State Government, in view of the aforesaid judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and is required to be quashed and set aside. Learned counsel for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 16-4-2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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